

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
                  ) WHERIFY WIRELESS, INC. )  
                  ) )  
For a Certificate of Registration. )  
\_\_\_\_\_ )

DOCKET NO. 2006-0419

DECISION AND ORDER NO. 23104

Filed Dec. 4, 2006  
At 12 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

In the Matter of the Application of)  
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      WHEREFY WIRELESS, INC.           )  
  )  
For a Certificate of Registration.      )  
  )

Decision and Order No. 23104

By this Decision and Order, the commission grants WHEREIFY WIRELESS, INC. ("Applicant") a certificate of registration ("COR") to provide resold wireless telecommunications services in the State of Hawaii ("State").

Applicant is a Delaware corporation with its principal place of business in Redwood Shores, California. Applicant is authorized to transact business in the State of Hawaii as a foreign corporation.

On October 19, 2006, Applicant filed its application for a COR to operate as a provider of resold wireless telecommunications services in the State.<sup>1</sup> Applicant utilized the

<sup>1</sup>Applicant served copies of the application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to

form application developed in In re Public Utilities Commission, Docket No. 03-0186, Order No. 21324, filed on August 27, 2004 ("Order No. 21324"), to make its request ("Official COR Form").

B.

Consumer Advocate's Position

On November 16, 2006, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to approval of Applicant's request. The Consumer Advocate, however, recommends that Applicant be required to 1) provide a toll-free telephone number to receive calls regarding service and billing matters, as required by HAR § 6-80-114(6); and 2) maintain and promptly provide updated information regarding its service plans (with terms and conditions) and the appropriate contact information (i.e., designated carrier representative) upon the commission's, the Consumer Advocate's, or a consumer's request, and that such updated information be placed on the Applicant's website, if any.

II.

Discussion

HRS § 269-7.5 prohibits a public utility from commencing business in the State without first obtaining a certificate of public convenience and necessity ("CPCN") from the

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this docket pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

commission.<sup>2</sup> HAR § 6-80-17(c) and (d) also state, in relevant part:

- (c) Any person, other than the incumbent telecommunications carrier, seeking to offer, initiate, or provide intrastate telecommunications service must apply in writing to the commission for a certificate of authority. The application must:

- (1) Include information on the:

- (A) Type of telecommunications service to be offered;
- (B) Geographical scope of the carrier's proposed operation;
- (C) Type of equipment to be employed in the service;
- (D) Rates or charges proposed to be imposed and the regulations that will govern the proposed service; and
- (E) Applicant's financial ability to render the proposed service, including a copy of the most recent audited financial statement and, if more than three months have elapsed since the date of the most recent audited financial statement, a current, unaudited financial statement; and

- (2) Comply with all applicable commission orders and rules. The commission may reject any application that fails to meet any of these requirements or is otherwise incomplete.

. . . . .

- (d) Where exempted by federal law from entry regulation by the State, a telecommunications carrier seeking to offer, initiate, or provide intrastate telecommunications service shall apply for a certificate of registration with the commission by complying with subsections (c)(1) (A) - (D) and (c)(2) only.

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<sup>2</sup>On June 3, 1996, HAR Chapter 6-80 took effect. HAR Chapter 6-80, among other things, replaces the CPCN with a COR for telecommunications carriers providing CMRS, and establishes procedures for requesting and issuing a COR.

HAR § 6-80-17(c) and (d) (emphasis added).

Recognizing that the federal Omnibus Budget Reconciliation Act of 1993 preempted state and local governments from regulating the entry of and the rates charged by providers of CMRS, while expressly allowing states to regulate the other terms and conditions of commercial mobile services,<sup>3</sup> the commission initiated Docket No. 03-0186 to investigate and determine whether it is consistent with the public interest to exempt CMRS providers and their services from any provisions of HRS Chapter 269. On April 7, 2004, the commission issued Decision and Order No. 20890 waiving various regulatory requirements of HRS Chapter 269 and HAR Chapter 6-80 for any and all CMRS providers in Hawaii, subject to certain applicable conditions, limitations, and clarifications. On August 27, 2004, the commission issued Order No. 21324 correcting certain clerical errors of Decision and Order No. 20890 and adopting an official application form for CMRS providers and cellular resellers, i.e., the Official COR Form.

Having reviewed the record, the commission finds that Applicant has sufficiently satisfied the requirements of HAR § 6-80-17, to the extent such requirements were not waived in accordance with Decision and Order No. 20890, as amended by

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<sup>3</sup>See In re Public Utilities Commission, Docket No. 03-0186, Decision and Order No. 20890, filed on April 7, 2004 ("Decision and Order No. 20890"), at 1-2 (citing Pub. L. No. 103-66, Title VI, § 6002, 107 Stat. 312, 392 (1993) (codified in principal part at 47 U.S.C. § 332)).

Order No. 21324.<sup>4</sup> Consistent with Decision and Order No. 20890, the commission also finds, at this time, that providing appropriate regulatory flexibility to entities providing CMRS, including wireless resellers promotes increased competition and investment in the State's wireless telecommunications market.

Based on the foregoing, the commission concludes that Applicant should be granted a COR to provide resold wireless telecommunications services in the State. In addition, the commission concludes that Applicant should supplement its application through a letter to the commission, with a copy to the Consumer Advocate, identifying a toll-free telephone number to receive calls regarding service and billing inquiries, in accordance with HAR § 6-80-114(6).<sup>5</sup> The commission also concludes that the Applicant should maintain and promptly provide updated information regarding its service plans (with terms and conditions) and the appropriate contact information (i.e., designated carrier representative) upon request by the commission, the Consumer Advocate, or a consumer, and that such updated information be placed on the Applicant's website, if any.

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<sup>4</sup>To the extent that it was not waived by Decision and Order No. 20890, as amended by Order No. 21324, the commission also waives the publication requirement in HAR § 6-61-57(2). See HRS § 269-16.9; HAR § 6-80-135.

<sup>5</sup>Applicant's website, if any, should also be amended within a reasonable time period, to reflect the toll-free number.

### III.

#### Orders

1. Applicant is granted a COR to provide resold wireless telecommunications services in the State.

2. As a holder of a COR, Applicant shall be subject to all applicable provisions of HRS Chapter 269; HAR Chapters 6-80, 6-81, and 6-82; any other applicable State laws and commission rules; and any orders that the commission may issue from time to time.

3. Consistent with Decision and Order No. 20890, Applicant is not required to file tariffs in accordance with HAR §§ 6-80-39 and 6-80-40; provided that Applicant maintains and promptly provides updated information regarding its service plans (with terms and conditions) and the appropriate contact information (i.e., designated carrier representative) upon the commission's, the Consumer Advocate's, or a customer's request. Such updated information shall also be placed within a reasonable time period on Applicant's website, if any.

4. Within thirty (30) days from the date of this Decision and Order, Applicant shall supplement its Application through a letter to the commission, with a copy to the Consumer Advocate, identifying a toll-free telephone number to receive calls regarding service and billing inquiries, in accordance with HAR § 6-80-114(6), and consistent with ordering paragraph no. 3 above, Applicant shall also update its website, if any, to include the toll-free number, within a reasonable period of time.

5. Within thirty (30) days from the date of this Decision and Order, Applicant shall pay a public utility fee of \$60, pursuant to HRS § 269-30. The business check shall be made payable to the Hawaii Public Utilities Commission, and sent to the commission's office at 465 S. King Street, Room #103, Honolulu, HI, 96813.

6. Within thirty (30) days from the date of this Decision and Order, Applicant shall also pay a telecommunications relay service ("TRS") contribution of \$10.00, established pursuant to: (A) Act 50, adopted on May 7, 2003 (codified as HRS § 269-16.6); and (B) Decision and Order No. 22536, filed on June 16, 2006, in Docket No. 2006-0126. The business check shall be made payable to "Hawaii TRS," and sent to the Hawaii TRS Administrator, Solix, Inc.,<sup>6</sup> 80 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

7. Failure to promptly comply with the requirements set forth in paragraphs 2 to 6, above, as applicable, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

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<sup>6</sup>Solix, Inc. was formerly known as NECA Services, Inc.



DONE at Honolulu, Hawaii DEC - 4 2006.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By John E. Cole  
John E. Cole, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou  
Stacey Kawasaki Djou  
Commission Counsel

2006-0419.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23104 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

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Alpharetta, GA 30005

Attorney for WHERIFY WIRELESS, INC.

  
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Karen Higashi

DATED: DEC - 4 2006